



City of Cleveland

Michael R. White, Mayor

EPA Region 5 Records Ctr.



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Department of Law

Cornell P. Carter, Director
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
216/664-2800 • Fax 216/664-2663

April 29, 1999

Bri Bill
Community Involvement Coordinator
Office of Public Affairs (P-19J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: City of Cleveland's Comments to Engineering
Evaluation/Cost Analysis for Master Metals Superfund Site.

Dear U.S. EPA:

The City of Cleveland (the "City") submits these comments to the Engineering Evaluation/Cost Analysis ("EC/CA") prepared November 23, 1998 by "Entact" on behalf of the PRP Group, which evaluated four (4) alternatives for lead-contaminated soil cleanup at the Master Metals Superfund Site. The USEPA recently accepted the EC/CA and is recommending Alternative 2 of the four (4) Alternatives. To reiterate, Alternative #2 provides that:

Off-site contaminated soils will be excavated and consolidated on-site; the contaminated areas on-site will be covered with a geotextile barrier, two feet of clean fill and vegetation; operation and maintenance of the cover will be required for thirty (30) years; and deed restrictions will be recorded to prohibit disturbance of the cap and minimize potential exposure of contaminated soil.

A public hearing was held on March 18, 1999, and comments were submitted by various community members as well as by representatives of the City relative to the different Alternatives. The City's concerns and objections regarding Alternative #2 are set forth below and in the enclosed materials.

OBJECTION #1. PERIMETER CONTAMINATED SOILS ARE BEING RECONSOLIDATED ON SITE.

(a) The Delineation of Perimeter Soils to be Remediated is Inadequate. Alternative #2 proposes to remediate off-site areas extending outward from the eastern and southern property lines to the existing concrete curb of West Third Street; from the western property line to where there is visual evidence of the divide between the manufacturing operations of Master Metals and the eastern edge of the adjoining railroad spur. The City of Cleveland's Health Department recently took soil core samples of locations outside the boundaries of the off-site areas proposed to be remediated in Alternative #2, and found lead levels well in excess of the 1,000 ppm cleanup level which the U.S. EPA has established for this site. In particular, samples taken near the eastern curb of West Third east of the site and samples taken near the southern curb of West Third south of the site, indicated lead levels as high as 15,000 to 35,000 ppm. (See enclosed map of sample locations and corresponding lead levels which was prepared by the Department of Health, Division of Environment, and marked as "Exhibit A").

The City is concerned that the proposed off-site remediation is not extensive enough to encompass all areas which contain lead contamination at levels which pose a threat to human health and the environment. The City feels strongly that the USEPA should require the PRP group to extend the boundaries of the off-site areas to be remediated.

(b) Perimeter contaminated soil is being reconsolidated on site. The City opposes this method of disposing of the off-site contaminated soil. The levels of lead contamination in this soil has been measured as high as 24,000 to 43,000 ppm. Reconsolidation on-site increases the volume of contaminated materials on-site and, thus, the overall toxicity, mobility, and volume of contamination at the site. Two of the goals of remediation under the National Contingency Plan (40 CFR 300.430 et seq.) is to minimize untreated waste, and to reduce toxicity, mobility, and volume of contaminants on site. The City is not persuaded by the USEPA's explanation that reconsolidation on-site actually reduces the risk to public health.

The City is particularly concerned that the perimeter material to be deposited on-site may constitute hazardous waste. We agree with the Ohio EPA's comments of May 29, 1998 which state that Superfund sites should not become collection points for additional waste because they are already contaminated. (Ohio EPA comments, page 4). The City will not accept the creation of a hazardous waste landfill within its municipal boundaries.

Contaminated materials excavated during the Phase I Time Critical Removal were treated and disposed of as "special waste" off-site. The levels of lead-contamination in the Phase I soil turned out to be generally lower than the levels of the off-site perimeter soil. Therefore, off-site disposal may be more justified for the perimeter soil than it was for the Phase I excavated soil.

Finally, the City is unaware of any other sites within the City where a cleanup has been authorized involving a reconsolidation on site of off-site contaminated soils. We do not condone setting such a precedence with this site.

Without waiving the City's objection to the reconsolidation of off-site soil on site, in the event the US EPA ultimately approves Alternative #2 in its present configuration, the City would recommend that all off-site materials be confined to limited and out-of-the-way areas of the site which are not likely to encounter heavy traffic in the event the site is redeveloped. The City opposes the mounding of off-site consolidated soils on site, since mounding would create surface water run-off problems, and would limit the future utility of the site. The City requests that topographical maps be created showing present site conditions, and the proposed filling activities. All filling operations must comply with City of Cleveland Codified Ordinances, Chapter 561, Landfills (a copy of this Chapter is enclosed and marked as "Exhibit B").

(c) Alternative treatment methods have not been considered. Alternative #2 does not consider the treatment of off-site reconsolidated soils through bioremediation or other methods, as a possible substitute for capping and, potentially, for the requirement of deed restrictions. The National Contingency Plan (40 CFR 300.430 et seq.) provides that treatment should be utilized to address the principal threats posed by a site wherever practicable. Innovative technology should be considered when such technology offers the potential for comparable or superior treatment performance or implementability than other demonstrated technologies, such as capping, or the use of institutional controls, such as deed restrictions. The National Contingency Plan (the "NCP") further encourages the development of remediation alternatives which considers treatment methods that reduce the toxicity, mobility, or volume of hazardous substances or contaminants thus eliminating or minimizing the need for long-term management.

The City understands that there are technologies available that may be able to accomplish this result, and the City opposes the approval of Alternative #2 in its present form

without a thorough evaluation of the alternatives. This comports with the expectations of the National Contingency Plan (40 CFR 300.430(a)(i)(D)) which states that, "the use of institutional controls shall not substitute for active response measures, (e.g. treatment and/or containment of source material...) as the sole remedy unless such active measures are determined not to be practicable, based on the balancing of trade-offs among alternatives that is conducted during the selection of remedy".

OBJECTION #2: THE PRPs HAVE NOT PROPOSED TO REMEDIATE THE UNDERLYING CONTAMINATED SLAG.

The dubious and sloppy methods of operation of the Master Metals facility from 1979 to 1993 (16 years) surely contributed significantly to the contamination levels in the slag underlying the cement area on the property. Recognizing the fact that this underlying slag contained some historical contamination, the PRP's should, nevertheless, be made accountable to some extent for the present contaminated condition of this material. The City recognizes that the cost of digging out and remediating the contaminated slag may be extremely costly. There has been little evident consideration, however, of other potentially less costly treatment alternatives that may be effective to stabilize or reduce the toxicity of the underlying slag so as to eliminate the requirement for deed restrictions (see discussion in Objection #1 (c) above). Remediation of the underlying material would increase the chances for future redevelopment of the site, which is of great concern to the City, since treatment may eliminate the need for deed restrictions.

OBJECTION #3. PROPOSED DEED RESTRICTIONS PROHIBITING SUBTERRANEAN DIGGING MAY PREVENT FUTURE REDEVELOPMENT.

The USEPA has stated that it is not legally permitted, under the National Contingency Plan, to consider redevelopment of the site as a factor in its evaluation of the EC/CA. The City maintains, however, that reuse of the site cannot be ignored in fashioning the appropriate remedy for this site, since it would be inconsistent with the goals of the National Contingency Plan for a Superfund site to obtain closure when the only foreseeable future use of the site is as a vacant landfill virtually unusable for any purpose. The National Contingency Plan says that institutional controls should not be a substitute for active response measures. In this case, the USEPA is stopping short of its responsibilities under the NCP by relying on deed restrictions in conjunction with capping as the sole viable alternative for remediation at this site.

The deed restrictions proposed will place enormous burdens on the ability to place any underground utilities or structures on the site. Permission from the USEPA to disturb the cap after site closure will be very difficult to obtain, and it is unreasonable for the USEPA to require that a work plan for subterranean site development be established now. It is very unlikely that a prospective buyer would be able to overcome all the practical and legal obstacles involved in evaluating whether to acquire the Master Metals Superfund Site before remediation is complete, particularly under the circumstances of this site (i.e. the property is in foreclosure for back taxes, and ownership of the property cannot be easily be determined).

The City adamantly supports a solution to the contamination problems at this site that not only abates the risks to human health and the environment, but also returns the property to the community as a productive, developable site. The City believes that the USEPA has the leverage to negotiate such a solution with the PRP group, and urges it to do so.

OBJECTION #4. ALTERNATIVE #2 OF THE EE/CA REQUIRES AN OPERATION AND MAINTENANCE AGREEMENT ("O & M") FOR A PROPOSED 30 YEAR PERIOD OF TIME.

The best alternative for site remediation would be to require a closure that removes all contamination from site, and thus, does not involve limitations on excavation and does not require an Operation and Maintenance agreement (O & M Agreement). In the event the USEPA does approve a remediation alternative that includes an O & M Agreement, the City questions whether the 30 year O & M Agreement being proposed provides adequate long-term protection for the site. Under the NCP, long-term and permanent protections afforded by a remediation alternative must be considered in evaluating the appropriate remedy. (40 CFR 300.430(e)(9)(iii)(C)). The City believes that the effectiveness of a capping system during and beyond the 30 year time period has not been adequately addressed by Alternative #2.

After the expiration of the 30 year period, it is not clear what environmental liabilities and health risks the community and potential future users of the site would be facing. More importantly, the 30 year O & M agreement only provides a band-aid solution to a long term and permanent problem that will continue to exist indefinitely if the lead-contaminated slag is allowed to remain on site and the perimeter soil is placed on the site, since the levels of lead contamination will not degrade or dissipate with time. It is for these reasons that the City believes that the best solution is to require a remediation alternative that will not require an O & M Agreement.

Without waiving its objection to the O & M requirement, the City would like to see additional safeguards required of the PRPs in the O & M Agreement. In particular, the City would like to see a requirement that periodic soil sampling and analysis be required to ensure the cap is effective in keeping the contaminated soil and slag underneath from being exposed at the surface. In addition, a specific cap maintenance plan should be required setting up a scheduled for basic activities such as grass-cutting, re-planting of cover vegetation in the event of erosion, debris monitoring and cleanup. The City also questions why a longer time period than 30 years cannot be negotiated with the PRP group. At the end of the O & M period, the City would like a requirement that soil samples be taken and analyzed, and evaluated under then-current standards to determine whether the levels of lead and other contaminants exceed regulatory standards and warrant further cleanup. It is possible that in the future, science will have determined that the levels of lead on site are more hazardous to human health and the environment than is currently known.

In addition, the City questions the valuation figures presented in the EC/CA for the cost of maintaining the 30 year O & M. The City believes that \$9,600.00 is a gross undervaluation of the actual cost, even in present day dollars, that will be required to maintain the fence at the site, and the cap system. The cost of repairing the fence alone could well exceed this figure, and past vandalism of the fence at the site demonstrates how likely fence repairs and replacements will be. Moreover, there is no contingency built into the figure for accidental releases. Although a release is unlikely, there should be some type of financial assurance that funds will be readily available to clean up a release. An inflation adjustment should be built into the calculation of the figure to provide a more realistic dollar amount. As an alternative, perhaps some type of pollution liability insurance policy covering the costs of accidental releases should be considered, or income producing investments such as annuities which would provide for growth sufficient to cover contingencies. In addition, to encourage future development of the site, the PRPs should be required to place enough funds into escrow to cover the costs of negotiating and obtaining a Prospective Purchaser Agreement between the USEPA and a potential new owner of the site. The requirement of an O & M Agreement could render marketing of this site difficult during the O & M period since prospective buyers would be required to assume legal responsibility for the O & M agreement until it expires.

Finally, the City asks that the USEPA monitor the site more frequently than every five (5) years as is contemplated under the NCP. At a minimum, the City would like the USEPA to monitor on a semi-annual basis, and report the results of that monitoring to the City's Departments of Public Health and Law. More frequent monitoring may be required if the property remains vacant and the fence falls into disrepair, allowing access to the site.

OBJECTION #5 USEPA IS UNCONCERNED WITH GROUNDWATER CONTAMINATION.

The PRPs were required to install groundwater monitoring wells and take ground water samples. Sample results indicated that lead concentrations are as high as 1.35 mg/L and chromium concentrations as high as 1.33 mg/L. These levels are in excess of the federal drinking water standards. However, the USEPA states that since the ground water is not a source of drinking water in the area, no further remedial action must be taken. The NCP, however, requires evaluation of ground water contamination when ground water is a potential source of drinking water. Although ground water in the area of Master Metals is not currently a source of drinking water, there is no guarantee that in the future, the situation could not change.

The City believes additional consideration should be given to the ground water contamination. The PRPs should be required to conduct an evaluation of the impact of ground water contamination on Lake Erie, and the implications thereof under the Great Lakes Water Quality Initiative. Moreover, the EC/CA should address the impact of ground water contamination on documented wells at Standard Oil and Sherwin Williams (depicted in figure 2.7 of the EC/CA). The fact that the total lead in the aquifer has decreased in the past six years suggests that contaminated water is migrating off-site. The City suggests continued on-site monitoring and off-site ground water monitoring to determine whether lead contaminating in the ground water on-site is migrating. Ultimately, remediation may be required.

OBJECTION #6. HOLMDEN AVENUE SITE CONTAINS PHYSICAL HAZARDS.

Testimony at the public hearing indicated that there may exist physical dangers at the Holmden Avenue site that were created as a result of the removal of contaminated soil by the PRPs. A gentleman testified that soil excavation conducted by the PRPs created a steep slope without any barricades to prevent a person from falling. Such a condition would

constitute a nuisance and should be corrected immediately. The City questions whether the PRPs should not be required to hire an engineer to evaluate the stability of the slopes created by the excavation and land filling which occurred there. Interim measures, i.e. installation of a fence or barrier, may need to be taken immediately to prevent accidents while the situation is being evaluated.

OBJECTION #7. THE USEPA HAS NOT EVALUATED WHETHER ALTERNATIVE #2 VIOLATES ENVIRONMENTAL JUSTICE CONCERNS OF THE SURROUNDING COMMUNITY.

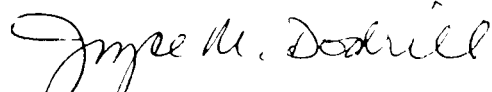
Although Master Metals is located in an industrial corridor, its location is only approximately 1/4 mile away from low-income public housing. It does not appear that the USEPA has considered the environmental impact on the residential areas of allowing high levels of lead contamination to remain on the Master Metals site indefinitely. The City maintains that an Environmental Justice analysis should be performed before a final remediation alternative is selected.

In conjunction with this evaluation, the USEPA should make an effort to directly solicit comments to the remediation plan from the Department of Housing and Urban Development, and the Cuyahoga Metropolitan Housing Authority which operates the low-income public housing nearby. The City's Health Department would like to work with the USEPA in communicating information concerning the existing site and the health risks posed by lead to the neighboring community. Also, we would like to know how the surrounding community will be notified of future remediation at the site, i.e. through signage, public notice, etc., and whether the PRPs can be required to perform additional testing of nearby playgrounds and residential areas to address concerns of potential migration of lead particles or dust during remediation.

The City of Cleveland appreciates this opportunity to submit comments and objections to the proposed clean-up plan for the Master Metals site, and requests that these comments and objections be considered as a basis for the USEPA to reject

Alternative #2, and require the PRPs to propose a more comprehensive clean-up alternative.

Respectfully submitted,

A handwritten signature in cursive script, reading "Joyce M. Dodrill".

Joyce M. Dodrill
Assistant Director of Law

cc: LaVonne Sheffield-McClain
Barry Withers
Ken Silliman
Chris Warren
Kevin Schmotzer
Michele Whitlow
Robin Rogers
Mark Villem
Marv Rogers
Cornell Carter
Raymond Rea
Linda Hudacek
Terry Ross
Henry Guzman
Kevin Gerrity
Mark Scott
Ollie Zahrodohij
Sheila Abraham, OEPA
Jeff Health, USEPA
Gwen Massenburg, USEPA

dollars (\$100.00) or imprisoned not more than sixty days or both.

(b) Whoever violates Section 559.28 shall be fined not more than twenty-five dollars (\$25.00), and for a second offense not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) and imprisoned not more than ten days, or both, and for any subsequent offense not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) or not more than thirty days imprisonment, or both. However, any person who has violated the provisions of Section 559.28, upon filing in the criminal branch of the Municipal Court a written plea of guilty within forty-eight hours after arrest or citation, may for the first and sec-

ond offense be fined fifty cents (50¢) and cost of court, unless there are facts presented by the Commissioner of Traffic or his representative tending to show that a greater fine should be imposed. (Ord. No. 98583. Passed 6-5-33)

(c) Whoever violates Section 559.53 shall be subject to the penalty set forth in that Section. (Ord. No. 3056-83. Passed 4-23-84, eff. 4-25-84)

(d) Whoever violates the provisions of Section 559.54 shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than ten days, or both. (Ord. No. 1233-76. Passed 6-21-76, eff. 6-26-76)

Chapter 561

LANDFILLS

561.01	Purposes
561.02	Definitions
561.03	Permit Application and Approval Required
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561.08	Correction of Hazardous Conditions
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561.10	Liability of City
561.99	Penalty

CROSS REFERENCES

Operation of dump ground so as to constitute a nuisance, RC 3707.39

Solid waste disposal, RC Ch 3734

Solid waste projects, RC Ch 6123

Waste collection and disposal, CO Ch 551

Dumps, CO 551.26 et seq.

561.01 Purposes

The purposes of this chapter are to safeguard life, limb, property and the public welfare, and to preserve the environment and the stability of hillsides by regulating the filling of land. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.02 Definitions

As used in this chapter, unless a different meaning is clearly indicated by the context:

(a) "Director" means the Director of Public Service.

(b) "Earth material" means any rock, fill, natural soil and/or any combination thereof.

(c) "Fill" means an artificial or mechanical act by which earth, as defined in Chapter 551, is placed, pushed, dumped, pulled, transported or moved to a new location above the natural surface of the ground or on top of the stripped surface, and includes the conditions resulting therefrom. "Fill" also means the difference in elevation between a point on the original ground and a designated point of higher elevation on the final grade. "Fill" also means the material used to make a fill. "Fill" refers to temporary or permanent operations.

(d) "Person" means an individual, partnership, partner, firm, corporation, association, joint stock company, trust, estate or any other legal entity, or their legal representatives, agents or assigns.

(e) "Site" means any lot or parcel of land or contiguous combination thereof, upon which filling is, has been or will be performed. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.03 Permit Application and Approval Required

(a) No person, being the owner of any property or in possession or control of any property, shall cause, permit or allow any filling to be done on such property until such person, or his or her

agent, files an application, in the office of the Director of Public Service, for a permit to do so, and until such a permit has been issued to such person by the Director. A separate application and permit are required for each site.

(b) Such permit applications shall be made on forms prepared by the Director and shall contain such information as he or she deems necessary to determine whether or not the permit should be issued. The information required in such application, including plans and specifications in triplicate, shall include:

- (1) The owner's name and address;
- (2) A plot plan, drawn to scale, showing the location of the proposed work, with the permanent parcel number and street address;
- (3) A contour map of the affected area, showing the existing contours in dashed lines and the proposed contours in solid lines at one-foot intervals;
- (4) A diagram of any temporary drive provision; and
- (5) The name and address of the person supplying the fill.

The Director may, at his or her discretion, waive any of the requirements set forth in this subsection.

(c) The Director may, by rule or regulation, prescribe additional requirements for permit applications. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.04 Criteria for Granting Permits

(a) No permit to fill shall be granted until the applicant demonstrates to the satisfaction of the Director of Public Service that the proposed fill will not:

- (1) interfere with adequate drainage for the site area and the drainage area of land tributary to the site;
- (2) obstruct, damage or adversely affect existing sewerage or drainage, public or private;
- (3) cause a stagnant pond of water to form;
- (4) create slope stability problems on subject and adjacent property; and
- (5) cause detrimental erosion or sedimentation.

(b) The Director of Public Service shall refer each permit application to the councilman in whose ward the site is situated for recommendations on whether or not the permit, if issued, would meet the criteria set forth in division (a) of this section. (Ord. No. 2167-A-87. Passed 5-22-89, eff. 5-30-89)

561.05 Action on Permit Applications

An application for a permit to fill shall be acted upon within thirty days after it is filed in the office of the Director of Public Service. Such permit application may, at the discretion of the Director, include special terms and conditions to safeguard life, limb, property and the public welfare and to preserve the environment and the stability of hillsides. The Director shall notify the applicant, in writing, of his or her approval or reasons for the rejection of the application. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.06 Bonds; Issuance of Permits

(a) After the Director of Public Service approves an application for a permit to fill, the applicant shall furnish the City a bond in a sum of not less than one thousand dollars (\$1,000) to guarantee performance in accordance with the terms and conditions of the proposed permit. Upon approval of such bond by the Director of Law, such permit shall be issued by the Director of Public Service.

(b) When, in the opinion of the Director of Public Service, the termination before completion of a proposed fill operation would create an actual or potential hazard to the public, the Director of Public Service, prior to issuing the permit, shall require a bond to be approved by the Director of Law in an amount sufficient to cover the estimated cost of restoration of any affected land, or to cover the cost of performance of the operations under such permit, whichever is greater. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.07 Expiration and Renewal of Permits

A permit to fill shall be valid for not longer than one year, provided that any permit may be renewed for two additional one-year periods at the discretion of the Director of Public Service. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.08 Correction of Hazardous Conditions

Whenever the Director of Public Service determines that any existing fill, slope or other condition has become a hazard, endangers the public health and safety or any public or private property, adversely affects the safety, usability or stability of any public way or drainage channel or has caused detrimental erosion or sedimentation, the Director shall order the owner or person in control of the property on which such condition

exists to correct the condition. Such owner or person, within ten days after receipt of the order of the Director, shall apply for and obtain a permit pursuant to Section 561.03 and shall promptly proceed to correct the condition creating such hazard in accordance with this chapter. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.09 Suspension of Operations

(a) The Director of Public Service shall order operations under a permit to fill suspended whenever he or she determines that such operations are endangering the public health or safety. Such suspensions shall remain in effect until the condition causing the same is remedied to the satisfaction of the Director. The Director may also order a stop to any operation contrary to the terms and conditions of such permit. Such stoppage shall remain in effect until the operation is remedied to be in conformity with this chapter.

(b) No person shall fail to comply with an order by the Director suspending or stopping operations to fill.

(c) No person who has been issued a permit to fill by the Director shall fail to comply with the terms and conditions of such permit. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.10 Liability of City

The issuance of a permit to fill, or any action by the Director of Public Service under this chapter, shall not create in the City, its officers, agents or employees, any liability or responsibility for injury to persons or property caused by operations or conditions created pursuant to such permit. Nothing in this chapter shall be construed to relieve the owner or person in control of property from liability for injury to persons or property. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)

561.99 Penalty

(a) Whoever violates any of the provisions of this chapter, for which no penalty is otherwise provided, shall be fined one hundred dollars (\$100.00) for the first offense and two hundred fifty dollars (\$250.00) for each subsequent offense.

(b) Whoever violates any of the provisions of Section 561.03(a), 561.08 or 561.09(b) and (c) shall be fined not less than five hundred dollars (\$500.00) or imprisoned for not more than thirty days for the first offense and one thousand dollars (\$1,000) or imprisoned for not more than sixty days for each subsequent offense. (Ord. No. 1328-82. Passed 9-20-82, eff. 9-22-82)